

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)	
)	
The Connect America Fund)	WC Docket No. 10-90
)	
National Broadband Plan for our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform—Mobility Fund)	WT Docket No. 10-208

Comments of the Public Service Commission of Wisconsin

The Public Service Commission of Wisconsin (PSCW) respectfully submits these comments to the Federal Communications Commission (FCC or Commission) in response to the Further Notice of Proposed Rulemaking (FNPRM) released on November 18, 2011. The FNPRM requests comments on a variety of issues related to implementation of the Report and Order that lays out the Commission's path to intercarrier compensation (ICC) and universal service fund (USF) reform and the creation of the Connect America Fund (CAF).

As noted in the PSCW's earlier Comments and Reply Comments in these dockets, reforming ICC and the USF has been under consideration for at least the last ten years.¹ Many careers in the telecommunications industry have been started, made and concluded in dealing almost exclusively with these two issues. However, the complexity of the issues and the significant amount of dollars at stake has resulted in a number of failed attempts at reform. The PSCW applauds the Commission for taking the bold steps necessary to move resolution of these matters from ideas to action. The PSCW believes that, if properly implemented, the USF reforms ordered can more appropriately target support funding to achieve our long-term broadband goals by bringing broadband services to those who currently do not have access. As identified in our earlier Comments, Reply Comments and further outlined below, the PSCW submits that proper implementation of the USF reforms is dependent on a strong state role in monitoring and evaluating the results to assure performance meets that promise.

As stated in the PSCW's recent Comments in these dockets: "The PSCW continues to believe that many decisions are best made by state regulators and officials since they are closer to the people and entities impacted by those decisions."² Long histories of crafting and implementing state reforms, overseeing interconnection disputes, and other innovative administrative programs have provided states with important experiences that can be drawn upon to implement the important USF reforms identified in the Commission's Order.

The Commission's Report and Order establishes a complex reform scenario. Identifying a strong role for the states will be critical for success of these necessary reforms. Restricting or dampening state authority will result in removing authority from those closest to the affected

¹ *In the Matter of Connect America Fund et al.*, WC Docket No. 10-90, Comments of the Public Service Commission of Wisconsin at 1 (August 24, 2011) (PSCW Comments); *see also*, *In the matter of Connect America Fund et al.*, WC Docket No. 10-90, Reply Comments of the Public Service Commission of Wisconsin at 2-3 (May 19, 2011) (PSCW Reply Comments).

² PSCW Comments at 4.

consumers and providers, to the detriment of both. In addition, it will frustrate the states in their traditional roles as both the laboratories of public policy innovation and the workshops for honing it.

As identified in the PSCW's recent Comments, there are some issues where a national approach may make more sense in today's marketplace.³ However, any reservation of authority exclusively to the federal jurisdiction concerning universal service implementation for matters that have traditionally fallen under state prerogatives generally has the effect of preemption and should not be taken lightly. If taken, it should only be employed for legally necessary purposes and crafted as narrowly as possible.⁴

Specifically, the Commission should take careful consideration of how states interact with the concepts of universal service in a broadband world. The Telecommunications Act of 1996 (TA-96) calls for universal service support to be explicit and sufficient to achieve the universal service goals.⁵ Implicit support attained through charging rates that are above costs for access services appears inconsistent with this requirement. However, TA-96 also calls for both Federal and State mechanisms to preserve and advance universal service.⁶ While preemptive action may be necessary to carry out the goals of ICC reform, *universal service reform requires the identification of a strong state role in the development of new and more robust broadband networks.*

³ PSCW Comments at 5.

⁴ See e.g., Presidential Memorandum on Preemption, 74 Fed. Reg. 24,693 (May 20, 2009) ("The purpose of this memorandum is to state the general policy of my Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.")

⁵ 47 U.S.C. § 254(e).

⁶ 47 U.S.C. § 254(b)(5). The tension between cost-based rates and the goals of universal service is not a new issue at the FCC. See *Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 523, 538 (8th Cir. 1998) (recognizing the "implicit tension between the FCC's goals of moving toward cost-based rates and protecting universal service.")

The Commission's Report and Order is an important step, and provides an opportunity to *expand* the role of the states and use the localized knowledge and expertise of state commissions in a meaningful way with the goal of maximizing the consumer benefits of these reforms. States (particularly state commissions) can be strong partners in that effort. The Commission needs to carve out in this rulemaking specific and meaningful places for this federal-state partnership to continue.

This partnership may be best highlighted in *an expanded state role with respect to the support provided from the CAF for broadband deployment*. States are in a particularly good place to identify areas where broadband dollars will be best spent to get the most effective results for each USF dollar.⁷ For example, states may be able to identify areas that are less likely to be served without subsidy. These are judgments that involve balancing the interests and unique circumstances of individual communities that will be better known by state officials.

States are also in a good position to identify carriers that will fulfill the commitments of securing CAF funding for broadband deployment and to identify on a granular basis areas where sufficient competitive choices would obviate the need to support. Also, in an effort to avoid fraud or misuse of limited resources, states could be given a stronger and clearer role in policing the use of support funds and to identify quickly where remedial actions need to be taken.⁸

While the PSCW commends the Commission's action to take bold and important actions to reform ICC and the USF support mechanisms, significant work is needed to implement these reforms. The PSCW believes states will be an important partner in this implementation and

⁷ PSCW Reply Comments at 4.

⁸ States can and do currently play this role in policing the use of USF funds as part of the eligible telecommunications carrier (ETC) designation process and annual ETC certification process. However, in many cases states play a limited policing role by informing USAC when issues are identified. With clearer authority to take action, states would be able to address these issues more quickly.

encourages the Commission to rely on state expertise and processes to successfully implement these reforms.

The PSCW's more specific comments on the issues identified in the FNPRM are as follows:

1. Ensuring Compliance with CAF Obligations, Measuring and Reporting Broadband Speeds and Other Verifications [¶¶ 1012-1015]

Meeting the obligations required to receive CAF funding is critical to meeting the overall goals of the Report and Order and providing reliable broadband to more people. Developing standards without also developing a strategy to ensure compliance with those standards would be an ineffective reform.

Ensuring compliance and engaging in verification efforts are places where the states can have a significant impact. States are often very familiar with the facilities and operations of the providers in their states and the communities they serve. With respect to verification, the PSCW believes that states have the expertise and processes already in place to develop the necessary records and to perform the necessary analysis for proper verification of information and compliance determinations. Explicitly providing authority to the states to develop adequate and accurate reporting and testing will provide a cost-effective way to better ensure the proper use of USF monies. Hence, states should be empowered to engage in fact-finding and to make determinations regarding assurance of performance much as they do now in arbitration of interconnection disputes or in the public interest requirements of ETC designations.

2. Comparing Services Between Providers and How to Keep Up with Changes in Technology [¶¶ 1018-1025]

The Commission seeks comment on how to determine reasonable comparability of broadband services and rates in urban and rural areas and between different types of service providers. First, the PSCW identifies that this is another area for state involvement given the proximity to the services that are being provided and the consumers that are purchasing those services. Many states currently conduct a variety of surveys and compilations of provider facilities, services, capabilities and performance and are often charged with analysis and reporting of such findings to legislative committees and executive branch agencies.

States are also familiar with the communities and providers within their borders and are better able to determine whether responses to such inquiries are complete and accurate. The National Telecommunications and Information Administration (NTIA) has funded and entrusted many states to perform the broadband mapping and planning functions within their states. The PSCW believes states are just as interested in advancement of the Commission's broadband objectives and capable and willing to apply their capacity and expertise in analysis of rate, service, and technological comparability for achieving the objectives of the CAF. The relationship between federal objectives and state interests and abilities is well- matched for achieving these essential aspects which are critical to the success of the CAF.

Some elements of the Commission's Report and Order may cause controversy between and among providers. Again, this is an area where states are particularly well prepared for an immediate and important role. Since the enactment of TA-96, state commissions have been resolving interconnection disputes between providers and have implemented policies to advance competition for the benefit of consumers. These disputes have sometimes arisen as a result of

changes in technology. Given this experience, the PSCW continues to encourage the Commission to identify roles for the states in the implementation of these important reforms.

3. Identifying Interconnection Requirements [¶ 1028]

The Commission seeks comments on whether the Commission should require CAF recipients to offer IP-to-IP interconnection for voice service. The PSCW has identified this as an important issue in general, and reiterates its earlier comments that there are benefits to requiring all IP-to-IP interconnection requests to be performed under the requirements of § 251 of TA-96.⁹ Requiring interconnection under the long-tested and generally successful processes identified in § 251 will foster additional competition in the provision of new and advanced services and aid in the development of additional broadband networks.¹⁰

4. Interconnection and Backhaul for Community Networks [¶ 1029]

The Commission seeks comment on proposals to require fund recipients to make interconnection points and backhaul capacity available so that particular high-cost communities can deploy their own broadband networks. While imposing requirements for interconnection and backhaul on CAF recipients makes sense, the PSCW issues some words of caution with respect to public networks. While public networks may be justified under some circumstances, public networks developed to compete with private investment may not be fully consistent with other goals of the Commission's Report and Order. Indeed, Wisconsin has had cases where municipalities constructed networks on the belief that the network could be operated on an

⁹ *In the Matter of Petition for Declaratory Ruling that tw telecom, inc. Has the Right to Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act, as Amended, for the Transmission and Routing of tw telecom's Facilities-Based VoIP Services and IP-In-The-Middle Voice Services*, WC Docket No. 11-119, Comments of the Public Service Commission of Wisconsin (August 11, 2011).

¹⁰ *Id.* at 3.

enterprise basis and later found the operation required further unanticipated municipal support with the result that the networks were ultimately sold or leased to private providers.¹¹

The PSCW believes that the Commission's reform proposals and the resulting rules developed to implement them should continue to focus on the need for private investment and reserve the potential for public involvement to those limited circumstances where such involvement is appropriate.

5. Developing the CAF for Rate-of-Return Carriers [¶¶1031-1059]

The Commission seeks comments on how to implement reforms for rural rate-of-return carriers. The PSCW is well aware of the importance that rural carriers have to the economic development and prosperity of rural areas, of which there are many in Wisconsin. Many of Wisconsin's rural carriers have used support to develop state-of-the-art networks, including fiber-to-the-home facilities, in a number of Wisconsin's rural communities. The PSCW recognizes the significant investment that is necessary to build and maintain these networks, and applauds the Commission's continued support for rural areas.¹²

With that said, reforms are necessary to ensure that policies relating to rural rate-of-return companies are keeping pace with the reality of the marketplace. One stark example of where the policies appear to be lagging is the rate-of-return applied to rural carriers, which is currently

¹¹ In 2010, the PSCW approved the sale or lease of two municipal networks where the revenues from the operation were far less than anticipated. *Application of the Village of Jackson for Approval of a Preliminary Agreement for the Lease of and Option to Purchase Certain Telecommunications Facilities*, Public Service Commission of Wisconsin Docket No. 2720-TB-100, Final Decision (Sept. 30, 2010); *Application of the City of Antigo for Approval of a Preliminary Agreement for the Lease and Sale of Certain Telecommunications Facilities*, Public Service Commission of Wisconsin Docket No. 180-TB-100, Final Decision (February 19, 2010).

¹² While this section requests comments on the reforms applicable to rate-of-return carriers, the PSCW recognizes the important reforms for price cap carriers, specifically those reforms aimed at reducing the "rural-rural divide" which has impacted many areas in Wisconsin. The PSCW applauds these efforts and looks forward to the results of these policy changes in many of our under-served and un-served areas.

11.25 percent, a rate that was put into place in 1990.¹³ While the PSCW does not have a recommendation on what the reduced rate should be, it is necessary to lower this rate.

The PSCW does not set rates for telecommunications providers and has not performed a full rate case in this area for many years. However in other fields, such as electric and water rates, the PSCW performs regular analyses of rates, including the necessary rate-of-return. In these fields, rates-of-return have been trending downward in recognition of the economic realities, including the lower cost of debt in today's marketplace. In light of the highly contentious nature of such rate-of-return proceedings, the Commission may want to consider an adjustment to the benchmark return by referencing changes made in other regulatory proceedings.

Given the rapidly changing financial marketplace, the Commission should set a goal of reviewing this rate-of-return on a periodic basis to verify that the rate set still makes sense over time. For example, the Commission could set a rate now for the first three years of the CAF, and review this rate at the three-year anniversary. To ensure some level of certainty, the Commission could identify that any modifications made at the three year-review will be within a set percentage. Under this situation, the rate-of-return could be modified over time, but all parties would know what the range of potential change to the rate is during the entire period.¹⁴

¹³ The FPRM also identifies the potential to modify the 25 percent allocator of loop costs. This appears to be an issue where the expertise and experience of the Federal-State Joint Board on Separations would be extremely beneficial, if only to better understand the potential impacts of modifying the allocation between jurisdictions. The PSCW recommends that this issue be referred to the Joint Board.

¹⁴ The Commission also requested comments on a proposal by the Rural Associations that support be provided to any line that supports broadband at a minimum speed of 256k downstream. The PSCW recognizes that developing broadband in rural areas can be costly, particularly to get higher download and upload speeds. However, this speed is significantly lower than other speeds identified in the Report and Order. While some variation in speed requirements may be justified, this significantly lower speed does not appear to be beneficial policy for rural customers.

6. The Size of the Rural Fund [¶¶ 1034-35]

In the Report and Order, the Commission identifies that the CAF for rural areas is budgeted at \$2.05 billion per year, with potential increases to \$2.3 billion per year over the six-year timeframe of the CAF. The PSCW has heard from some Wisconsin providers that this amount of support may be insufficient to both maintain existing networks and build out new networks to un-served customers.¹⁵

With this in mind, to the extent there are savings in other areas of the CAF, those savings should be diverted to the rural fund for additional support to rural networks. Also, to the extent there are savings in other areas of the USF as the Commission pursues reforms to ensure the proper use of low-income funds, there may be opportunities to use those savings to further bolster the rural portion of the CAF.

Ultimately, the size of the USF needs to be determined based on whether the funds are sufficient, but not excessive, to meet the universal service goals. At some point in time, the Commission will need to evaluate the effectiveness of the programs it has just adopted in meeting the universal service goals. Only following such an evaluation will the Commission have the kind of information that will be needed to determine whether the size of the fund is sufficient.¹⁶

7. Determining Territory Overlaps and Cost Allocation Between Overlap and Non-Overlap Area for Rural Incumbent Local Exchange Carriers (ILECs) [¶¶ 1038-39; 1061-72; 1074-76]

States are in better position to understand the historical service areas and to review and verify the information necessary to evaluate the extent and magnitude of service territory

¹⁵ In many cases, the un-served areas are in very high cost areas that will likely cost more to serve than currently served areas.

¹⁶ The PSCW has previously raised concerns whether universal service goals could be met while reducing intercarrier compensation rates to zero. *See e.g.*, PSCW Reply Comments at 11. This is an issue that should be reviewed closely as intercarrier compensation rates are reduced over time.

overlaps. States should be empowered to make determinations regarding such matters based on their proximity, familiarity and expertise with the territories and the providers' facilities. State commissions also typically have some experience in cost allocations for ILECs and other utilities. For example, the Commission delegated the task of establishing cost-related zones for unbundled network elements to state commissions.¹⁷ To the extent cost determinations are necessary, states could be expected to be well-positioned and capable to provide such cost analysis.

8. Managing the Shift of Funds from ETC Support to CAF Support [¶¶ 1095-1101] and the Potential Impact on Low-Income Customers [¶1102]

The FNPRM identifies that the Commission anticipates that current subsidies for voice services will be reduced as competition expands and subsidies move to broadband networks. However, since there is no experience with the new fund and its impacts on existing voice services, the Commission should consider these potential impacts on a case-by-case basis to ensure that Americans continue to have access to basic voice services – even where they do not have access to a computer or other specialized customer premises equipment to access more advanced services. As it has in other areas of this Report and Order, the Commission may want to consider identifying a waiver process to provide a process and forum to address potential anomalies to the Commission's assumptions.

With respect to low-income customers, it is likely (and in some cases it will be necessary) for local rates to increase as a result of the reforms adopted in the Report and Order. The PSCW believes that this issue may also be premature for consideration now since there is no actual experience with how these reforms will impact low-income customers. The assumption may be that these significant reforms may require low-income solutions outside of the existing

¹⁷ 47 C.F.R. § 51.507(f)

framework of the Lifeline and Link-Up programs. As reforms are implemented, it may become clear that modifications to existing programs will be necessary. However, what those reforms will be is not clear now. While this is an important issue to keep on the radar, some additional experience with the new rules may be necessary before reforms of low-income programs should be addressed. Waiting for a better understanding of any problems will enable identification of appropriate and efficient solutions.

9. Accountability for Public Interest Obligations [¶¶ 1103-1106]; Financial Guarantees [¶ 1105]; Letters of Credit [¶¶ 1105-1109]; Penalties [¶¶ 1110, 1113]; Recovery of Past Support [¶¶ 1112-1113]; and Revocation of ETC Status [¶¶ 1110-1116, 1203-1207]

Again, it is prudent for the Commission to empower the states to assure support recipients are responsibly fulfilling the obligations they committed to in receipt of such support. States have a long and diverse body of experience to draw on from administering the public interest objectives for the various utility types they administer to determine the best ways to develop accountability for regulatory obligations. The list of options enumerated provides additional methods of assuring accountability beyond revocation of ETC status. Having multiple options will allow state commissions to address issues more quickly than solely relying on revocation of ETC status. Providing states multiple possible tools will enable states to identify ways to assure such accountability is achieved with the least burdensome requirements.¹⁸

In conclusion, the PSCW is encouraged by the reforms identified in the Commission's Report and Order. The success of these reform proposals depends significantly on proper targeting and accountability of CAF dollars. These functions can be aided by using the expertise

¹⁸ The PSCW recognizes that some reporting will come from mobile providers, which are generally exempt from regulation by state commissions. While states may not have authority to enforce specific requirements, states can provide an important perspective to ensure that funds are being used properly and that recipients are held accountable.

and experience of state commissions. The PSCW looks forward to providing additional comments on how to implement these reform proposals to provide a path towards additional investment in broadband networks throughout the country.

Dated at Madison, Wisconsin, January 13, 2012

By the Commission:

/s/ *Sandra J. Paske*

Sandra J. Paske
Secretary to the Commission

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